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Protection and Care of Children

The Child Welfare Act, 1978



Ontario

Ministry of
Community and
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Children's
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Miscellaneous Publications

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DEFINING THE CHILD IN NEED OF PROTECTION

Generally

A child actually or apparently under the age of 16 years is in need of protection under Part II of The Child Welfare Act, 1978 in any of the following circumstances: s19(1)(a)

- 1) if he is brought before the Court with the consent of the person who has charge of him to be dealt with under Part II of the Act, s19(1)(b)(i)
- 2) if he is deserted by the person who has charge of him, s19(1)(b)(ii)
- 3) if the person who has charge of the child cannot for any reason care properly for him, or where that person has died and there is no suitable person to care for the child, s19(1)(b)(iii)
- 4) if he is living in an unfit or improper place, s19(1)(b)(iv)
- 5) if he is found associating with an unfit or improper person, s19(1)(b)(v)
- 6) if he is found begging or receiving charity in a public place, s19(1)(b)(vi)
- 7) if he is out of control of the person who has charge of him, s19(1)(b)(vii)
- 8) if he is habitually absent from home or school without sufficient cause, s19(1)(b)(viii)
- 9) if the person who has charge of him neglects or refuses to provide or obtain proper medical, surgical or other recognized remedial or care treatment necessary for the child's health or well-being, or where that person refuses to permit such care or treatment to be supplied to the child when it is recommended by a legally qualified medical practitioner, or where that person otherwise fails to protect the child adequately, s19(1)(b)(ix)

- 10) if the child's emotional or mental development is endangered because of emotional rejection or deprivation of affection by the person who has charge of the child, s19(1)(b)(x)
- 11) if the child's life, health or morals may be endangered by the conduct of the person who has charge of him. s19(1)(b)(xi)

The Child Approaching His 16th Birthday

The Court's jurisdiction under Part II of The Child Welfare Act, 1978 is limited to children who are under the age of 16 years and apparently in need of protection at the time the Society makes application to the Court for a determination of that alleged protection need.

s.19(1)(a)

2. DEFINING THE 'PARENT'

Generally

Any of the following persons constitutes a 'parent' under Part II of The Child Welfare Act, 1978:

- a natural parent,
- a guardian of the child,
- a person who has demonstrated a settled intention to treat the child as a child of that person's family. s19(1)(e)

The Child Born Outside Marriage

If the child has been born outside marriage, any of the following documents may be offered as evidence of a person's parentage to the child:

- his or her acknowledgment of the fact of parentage and evidence that he or she has voluntarily provided for the child's care and support,
- a Court order or written agreement obligating the person to provide for the child,
- a Court order or written agreement granting the person custody of or access to the child,
- a written acknowledgement of the fact of parentage given to an adoption agency (including a Children's Aid Society) or person licensed for the purpose of the child's adoption. s19(1)(e)

If the person seeking to prove parentage does not have documentary evidence as enumerated above, the following presumptions of law may assist. The Children's Law Reform Act considers an individual to be a child's parent in the following circumstances, unless there is evidence to the contrary:

- if the person is married to the child's mother at the time of the child's birth,

- if the person was married to the child's mother by a marriage that was terminated by death or judgment of nullity within 300 days before the child's birth or by divorce where the decree nisi was granted within 300 days before the birth of the child,
- if the person marries the child's mother after the birth of the child and acknowledges that he is the natural father,
- if the person was cohabiting with the child's mother in a relationship of some permanence at the time of the child's birth or the child is born within 300 days after they ceased to cohabit,
- if the person and the mother of the child have filed a statutory declaration under subsection 8 of section 6 of The Vital Statistics Act or a request under subsection 5 of section 6 of that Act, or either under a similar provision under the corresponding Act in another jurisdiction in Canada,
- if the person has been found or recognized in his lifetime by a Court of competent jurisdiction in Canada to be the father of the child.

Persons Excluded From the Definition of 'Parent'

Foster parents, a Children's Aid Society and the Crown are specifically excluded from the definition of 'parent' under Part II of the Act.

s19(1)(e)

The Minor Parent

Where the parent of a child is under 18 years of age at the time of the Protection application, the Official Guardian has a duty to safeguard the parent's interests in the proceeding.

s19(4)

3. RESTRICTIONS ON PLACEMENT

Permitted Placement of a Child

A child may be placed or remain in the care and custody of a Children's Aid Society only in the following circumstances:

- where the child has been apprehended as a child apparently in need of protection and detained in a place of safety. Such apprehensions include those set out in ch.6, and the child removed from supervision. (see ch.24),
- where care of the child has been assumed by a homemaker placed in the child's home in the absence of his parent or custodian, and where that parent or actual custodian is unable to consent to the placement. (see ch.4),
- pursuant to an Agreement for Care (see ch.5),
- under the authority of any Order made under The Child Welfare Act which gives care and custody of the child to the Children's Aid Society.
- under the authority of an Order made under any other statute which gives care and custody of the child to the Children's Aid Society.
- during proceedings taken on appeal, if the decision of the Provincial Court (Family Division) or the Unified Family Court gives custody of the child to the Children's Aid Society (see ch.26)
- if the child is placed with the Children's Aid Society by his parents for the purpose of adoption, and all necessary consents to adoption have been obtained (see Adoption Training Manual).
- placement by order of the Court made under the authority of another statute e.g., the federal Juvenile Delinquents Act.

4. HOMEMAKER PLACEMENT

Conditions Precedent to Placement

If a child who is unable to look after himself has been left without proper care or supervision for what appears to the Children's Aid Society to be a temporary time, the Society may place a homemaker in the child's home as an alternative to his admission into care.

s23(2)

The homemaker placed on the premises must be approved by the Local Director of a Children's Aid Society or by a Director of Child Welfare

The homemaker may live on the premises and carry on those normal housekeeping activities that are reasonably necessary to care for the child. The homemaker may also exercise reasonable control and discipline over the child. Goods and services necessary to properly care for the child may be provided by the Children's Aid Society or by a Director of Child Welfare.

s23(3)(4)

Notice of the Placement

The Children's Aid Society must notify the child's parent or custodian as soon as possible after the placement, or at least make a reasonable effort to do so.

s23(6)

When the Parent or Custodian Returns

The person who normally has charge of the child may resume the child's care as soon as practicable upon his return.

Where the Parent or Custodian does not Return

If the child's parent or custodian has not returned within 5 days the child must be brought before the court as a child apparently in need of protection.

s23(2)

5. CARE BY AGREEMENT

Definition

Care by Agreement permits a child who is apparently in need of protection to receive care by a Children's Aid Society without requiring the child and his parents to go through a Court process.

Any one of the following care arrangements is available to the child's parents and their local Children's Aid Society:

1. Temporary care agreement - where a child comes into the care of the Children's Aid Society because his parents are temporarily unable to make adequate provision for him. If arrangements can be made to care for the child in his own home, a formal agreement is not necessary. s25(1)
2. Special needs agreement - where a child comes into the care of the Children's Aid Society or receives care in his own home because he has a physical, mental, emotional, behavioral or other handicap which requires services his parents cannot provide. This agreement requires the prior approval of a Director of Child Welfare. s25(4)
3. Special Needs Agreement for the 16-18 year old -where the adolescent who has a physical, mental, emotional, behavioral or other handicap requires services either in his own home or in another placement. This agreement also requires the prior approval of a Director of Child Welfare. s25(11)

Before entering into any agreement for the care of the child outside his home, the Society must consider the extent to which in-home assistance is a viable alternative to the child's removal. 25(5)

Maximum Length of Agreements

A temporary care agreement may not exceed 6 months. If at the time of its expiry the circumstances which necessitated the child's care by the Children's Aid Society have not been resolved, the agreement may be extended, but the first period plus any extensions cannot exceed 12 months. The Local Director of the Children's Aid society must approve any extension of the initial agreement.

s25(2)

No agreement for the temporary care of the child (or any extension of that agreement) may be taken if to do so would result in the child being in the care and custody of a Children's Aid Society for a continuous period of more than 24 months. Such care includes Society wardship, care by agreement, Court Orders for adjournments or any combination of these circumstances.

s25(3)

The child who has been in the care of a Children's Aid Society for a continuous period of more than 24 months and now requires additional care must be brought before the Court.

A special needs agreement is not time limited, unless a Director of Child Welfare prescribes a maximum term as a condition to his approval.

No agreement or extension, whether for temporary care or otherwise, may extend beyond the child's 18th birthday.

s25(10)

The Consent of the Child 12 Years of Age or More

If the child for whom the Care Agreement is contemplated is 12 or more years of age, he must give his written consent to the arrangement unless he is incapable of doing so.

s25(8) (9)

If the child has a developmental handicap of a degree which renders him incapable of giving consent, his consent to the agreement is not required.

s19(1)(c)

The inability of the developmentally handicapped child to consent to the agreement does not mean that he should not be consulted if he has the capacity to understand, even in limited terms, what the agreement involves. The care arrangement should be explained to him in a manner which reflects the worker's understanding of the child and at the same time respects the child's dignity.

The Child Under 12 Years of Age

Although the younger child's written consent is not required, the purpose and terms of the agreement should be carefully explained to him in a manner appropriate to his age and level of understanding and in a way which gives full recognition to the child's feelings and need for support.

Guardianship of the Child

Only those parental rights and duties voluntarily and expressly assigned to the Children's Aid Society (or the Minister) in the agreement are withdrawn from the child's parents during the term of the agreement.

If the child's discontent cannot be resolved within 72 hours Notice must be given to the child's parents and any other person who has signed the agreement that the child has requested review of the agreement, together with his reasons, and a date set for an informal case conference.

All parties who have signed the agreement, the child who has consented to it and staff who have worked with the family or the child should participate in the informal review.

The paramount consideration in any review is the best interest of the child.

If, as a result of the informal review, the existing agreement is not confirmed and no further agreement reached by the parties and the child within 21 days from the date the child gave Notice, the agreement is deemed to end. In such event the child is to be either returned to his parents or brought before the Court as a child apparently in need of protection.

s25(13)

Extension of the Agreement for Temporary Care

A temporary care agreement may be extended for a further period(s) that together with the first period will not exceed 12 months. Any term or condition of the agreement may be varied at the time the extension is negotiated.

s25(2)

The child's consent is required if he is 12 years of age at the time of the extension.

s25(8)

At the time of a request for an extension and prior to the expiry date of the agreement the parties should meet to ascertain whether present plans are working and to plan for the immediate future. The review or case conference should include a thorough assessment of the goals which were defined in the original agreement and any extensions of it, and the progress made toward these goals by the parent or guardian, the child and the Society.

Any extension of a Temporary Care Agreement requires the approval of Local Director of the Society whose responsibility it is to ensure that the Society has undertaken specific planning for the child.

Termination of the Agreement

An adult party to the agreement may end it at any time by giving 21 days written Notice to the Children's Aid Society which has the care and custody of the child or the Minister. If the child is under 16 years of age obligation of the Society or the Minister on receipt of such Notice or at the expiry of the agreement is to either:

s25(12)

- 1) return the child to the parent or guardian as soon as practicable and no later than 21 days,
- or
- 2) apprehend the child and bring him before the Court to determine whether he is or would be a child in need of protection if left in the charge of the parent or other person who had custody of him before the agreement.

If there is an outstanding Court Order for the child's custody the child may be placed with the person named in the Order.

s25(14)

6. APPREHENSION

The Order to Produce

A Police Officer, Director of Child Welfare, Local Director of a Children's Aid Society or anyone authorized by the latter two persons, who has reasonable and probable grounds to believe that a child is apparently in need of protection, may make application to the Provincial Court (Family Division or the Unified Family Court) for an Order that the person who has charge of the child produce him before the Court as specified by the Order.

s21(1)(b)

The Order to Produce allows the child to remain with his parent or custodian until the matter of his alleged need of protection is heard by the Court. If at any time subsequent to the Order, the Society has evidence that the child is at risk, it may ask the Court to place the child in the temporary care and custody of the Society pending the final outcome of the proceedings.

Apprehension With or Without a Warrant

A child apparently in need of protection is 'apprehended' within the meaning of The Child Welfare Act, 1978 when he is removed from the custody of the person who has charge of him, with or without that person's consent, and taken to a receiving home, foster home, hospital or other place of safety designated by a Director of Child Welfare. Within 5 days of the apprehension the Children's Aid Society must either

s22(1)

s19(1)(f)

- 1) bring the child before the Court for judicial determination of his alleged need of protection,
- 2) return the child to the person who had charge of him immediately before the apprehension (or to any other person entitled to custody by Court Order), or
- 3) enter into an agreement for care with the child's parents (see ch.5).

s27

Any person may apply to a Justice of the Peace for a warrant authorizing a Police Officer, Director of Child Welfare, Local Director of a Children's Aid Society or agent of the latter two persons to search for and detain a child allegedly in need of protection. The applicant for the warrant must satisfy the Justice of the Peace that there are reasonable and probable grounds to believe that the child is in need of protection. It is not necessary to name the child in the warrant.

s21(3)

Where any delay in apprehension would place the child at risk, a Police Officer, Director of Child Welfare, Local Director of a Children's Aid Society or anyone authorized by the latter two persons may apprehend the child without a warrant and hold him in a place of safety until he can be brought before the Court for Hearing of the alleged need of protection. Force may be used if necessary. If resistance is encountered, the Children's Aid Society should seek the assistance of the local Police. Anyone who attempts to obstruct or interfere with a person authorized to apprehend the child commits an offence and is liable on conviction to a fine of up to \$1,000 or to imprisonment for a term of up to 1 year, or both.

s21(1)(a)

s21(3)

s94(1)(d)

Children who Leave or who are Removed from Care without Society Consent

A Police Officer, Director of Child Welfare, Local Director of a Children's Aid Society or anyone authorized by the latter two persons who has reasonable and probable grounds to believe that a child under 16 years of age has left or been removed from the lawful care and custody of a Children's Aid Society without Society consent, may take the child to a place of safety and hold him there until the Court reviews his placement (if authority for his care flows from a Court Order) or determines his alleged need of protection. A warrant is not necessary to apprehend the child in these circumstances.

s21(2),

22(1)(b)

A child is in the 'lawful' care and custody of a Children's Aid Society if he is in Society care

- under the authority of a Court Order
- pursuant to an agreement for his care (see ch.5) or
- detained in a place of safety pending Court appearance (see below).

Children under supervision of the Children's Aid Society are not included within the ambit of this provision because their lawful care and custody normally remains with their parents or guardians.

The Place of Safety

The child who is apprehended may be placed in a receiving home operated or supervised by the Society for the temporary care of children, foster home, hospital or any other place designated by a Director of Child Welfare as a place of safety under The Child Welfare Act, 1978.

s19(1)(f)(g)

If the child runs from Society care, and in the Society's opinion no other place of safety can hold him, he may be detained in a designated Observation and Detention Home.

If the child is detained in an approved Observation and Detention Home, he must be brought before the Court as soon as practicable after his detention.

The Court may either

- 1) confirm the child's detention for a period or periods that will not exceed 30 days, or
- 2) discharge the child back into the care of the Children's Aid Society.

s27(2)

7. THIRD PARTY APPLICATION FOR PROTECTION PROCEEDINGS

Conditions Precedent to Application

A person concerned that a child may be in need of protection may apply to the Provincial Court (Family Division) or the Unified Family Court for an Order directing the Children's Aid Society to intervene on the child's behalf. The applicant must satisfy the Court of the following:

s22(2)

- 1) that his reasons for believing the child to be in need of protection are reasonable and probable, and within the ambit of those definitions in Part II of the Act (see ch.1).
- 2) that the matter has been reported to the Children's Aid Society,
- 3) that the Society has either refused or failed within a reasonable time to take action on the child's behalf.

The Children's Aid Society affected is given an opportunity to respond to the application.

The Court's Limited Power

A Third Party application is heard by a Judge of the Provincial Court (Family Division) or the Unified Family Court. The Court does not decide that the child is in need of protection, but rather directs that a full hearing of that alleged protection need be held in the immediate future.

Making Application

The Third Party who wishes to make application must attend at the Provincial Court (Family Division) or the Unified Family Court in the area in which the child normally resides. The Court Administrator will assist in completion of the application and schedule the matter for hearing at the first available sitting of the Court. Where the Court Administrator believes the child to be at serious risk the application will be expedited for hearing.

The Court Administrator will notify the Children's Aid Society which has allegedly delayed or refused to take action on the child's behalf of the date for the Hearing of the application in order to afford it an opportunity to respond.

8. THE PROTECTION APPLICATION

Limit on Time of Detention

If the Children's Aid Society decides to make application to the Court for a judicial determination of the child's need of protection, it must do so as soon as practicable and within 5 days of his apprehension.

s27(1)(b)

Jurisdiction of the Court

The Provincial Court (Family Division) in the County or District where the child is apprehended normally hear the Protection application and any further application under Part II of The Child Welfare Act, 1978 which relates to the child. In Hamilton-Wentworth, the application is heard by the Unified Family Court.

s19(2)

Transfer of Proceedings

After the Protection application is filed, the Court may be asked to transfer the proceedings to any other Provincial Court (Family Division) in Ontario or to the Unified Family Court if it is more convenient to hold the Hearing in the other County or District.

s19(3)

Hearing of the Case Outside Normal Court Hours

Any step may be taken in a Protection application at any time of any day, including a holiday, with the leave of the Court hearing the Protection application.

s34

9. NOTICES

The Court cannot proceed with any Hearing under Part II of The Child Welfare Act, 1978 until it is satisfied that all persons entitled to Notice of the proceedings have been served with Notice, or that a reasonable effort has been made to notify them.

s28(7)

Persons Entitled to Notice

The following persons are entitled to Notice of any proceeding under Part II of The Child Welfare Act, 1978:

- 1) any parent of the child (see ch.12),
- 2) any other person having actual custody of the child,
- 3) any foster parent who immediately prior to the Hearing has been caring for the child for a continuous period of more than 6 months,
- 4) the child 10 years of age and over unless an Order dispensing with Notice has been made (see below).

s28(7)

Notice to the Child

A child who is 10 or more years of age is entitled to Notice of any proceeding on his behalf, unless the Court is satisfied that the effect of the Hearing or any part of it would be injurious to the child's emotional health (see ch.10).

s28(8)(a)

A child who is under 10 years of age is not entitled to Notice unless the Court decides that the child is entitled to be present at the Hearing (see ch.10).

s28(8)(b)

Dispensing with Notice

Where the Children's Aid Society fears for the health or safety of the child and is unable to effect prompt service of a Notice, it may ask the Court to dispense with Notice to any person otherwise entitled. However, if the Court is persuaded to dispense with Notice, and subsequently finds the child in need of protection, its options for disposition are restricted. Crown wardship may not be ordered at all. Society wardship is limited to a maximum of 30 days, during which time the Society must continue its efforts to serve all persons entitled to Notice under the Act.

s28(12)

When the child is returned to Court for review of his status at the expiry of the 30 day order, the Children's Aid Society must satisfy the Court that reasonable efforts have been made to notify those persons entitled to Notice of the proceedings. The Court may then proceed as if Notice had been given.

Incomplete Notices

The Court's right to receive evidence in any Hearing under Part II of the Act is not restricted by the contents of the Notice of the Application. If additional grounds emerge in the course of the Society's investigation the Society may ask the Court to amend the Notice. The Court has discretion to direct further Notice to those persons entitled if it seems necessary in the circumstances.

s28(10)

10. ACCESS TO THE HEARING

Persons Entitled to be Present

Any of the following persons is entitled to be present at a Hearing under Part II of The Child Welfare Act, 1978:

- the person acting as applicant - normally, the Children's Aid Society,
- any parent of the child,
- the child who is the subject of the proceedings, unless the Court has ordered the child excluded (see below),
- representative(s) of the Children's Aid Society,
- a person acting on behalf of the Children's Aid Society,
- a person acting on behalf of the child's parents,
- a person acting on behalf of the child,
- any other person who has received Notice of the proceedings (e.g., a foster parent who has cared for the child for the 6 month period immediately preceding the Court application).

s57(3)

The Presence of the Child at the Hearing

In every proceeding under Part II of The Child Welfare Act, 1978 the Court must decide whether the child who is the subject of the application is to be present in the Courtroom for the whole or any part of the Hearing. There is a presumption that the child over 10 years of age is entitled to be present, and a corresponding presumption that the child under 10 years of age is to be excluded.

s33

A party to the proceedings who wishes the child over 10 years of age excluded from the Courtroom must persuade the Court that the effect of the Hearing (or any part of it) would be injurious to the child's emotional health.

s33(a)

What constitutes evidence of potential injury to the child's emotional health will vary with the circumstances of each case.

It should not generally be necessary to lead psychological or psychiatric evidence in relation to the 'emotional health' issue. The following focus is suggested:

- whether the child is probably already aware of the matters which are likely to be discussed at the Hearing;
- the extent to which the persons representing the Children's Aid Society have sufficient background information and knowledge of the child and family;
- the possibility that the child will persuade himself that 'secrecy' is necessary because the evidence about him and his family is far more damaging than it really is;
- the possible harm to the child's sense of justice if he is excluded from the forum in which his future is being decided;
- whether the child's presence (or exclusion) from the Hearing will adversely affect his relationship with his family (e.g., whether he will see himself as responsible for the family's problems).

A party to the proceeding who wishes the child under 10 years of age to be present at the Hearing must satisfy the Court that the Hearing (or any part of it) would be understandable to the child and not injurious to his emotional health. In addition to the focus suggested above, the child's wishes should be placed before the Court, preferably by the child himself.

s33(b)

Public Access

Any member of the public may request the Court's permission to observe all or any part of the proceedings. Admission is a matter of judicial discretion. The Court must consider the wishes and interests of the parties before the Court and the emotional effect on the child or other persons in the Courtroom.

s57(2)

Media Access

Two representatives of the press, radio and television media (chosen from among themselves) may also observe the Court process. If the media representatives cannot agree among themselves as to those of their number who will be present at the Hearing, the Court may designate two from among their number. The Court may also in its discretion allow more than two media representatives to be present.

s57(3)

Media representatives may be excluded altogether from any part of the Hearing if in the Court's opinion their presence would be injurious to the emotional health of any child who is before the Court. If the Court exercises its discretion to exclude the media from the Hearing, it must give reasons for the exclusion.

s57(3)

Ban on Publication

Publication of any information that has the effect of identifying the child, any member of his family, his foster parents or anyone charged with an offence in the proceedings whether that person is present at the Hearing as a party, a witness or otherwise, is an offence, punishable on conviction by a fine of up to \$10,000 or imprisonment for a term of up to 3 years, or both.

ss57(7), 94(6)

11. LEGAL REPRESENTATION FOR THE CHILD
*** not proclaimed June 15, 1979**

A child may be represented by a lawyer at any stage of any proceeding under Part II of The Child Welfare Act, 1978.

s20(1)

Where the child does not have legal representation at the time an application is made the Court must determine whether legal representation is desirable to protect the interests of the child. This determination must be made as soon as practicable in the proceedings; and may be reviewed at any late stage of the proceedings.

s20(2)

If the following circumstances are present, the child must have legal representation unless the Court is satisfied that the child's interests are adequately protected without legal counsel:

1. where there is a difference between the views of the child, the views of the Children's Aid Society or the views of the child's parents, and the Children's Aid Society is recommending that the child be removed from the care of his parents or custodian or remain in the care of the Society under an existing Society or Crown wardship order,
2. where the child is in the care of a Children's Aid Society and the parent is not present at any stage of the proceedings,
3. where the child is in the care of a Children's Aid Society and is alleged to be a child who has suffered abuse,
4. where an Order excluding the child from the Hearing is made or is likely to be made (See ch.10).

The views and preferences of the child, if they can be reasonably ascertained, are relevant to this inquiry.

s20(3)

12. EVIDENCE

Persons Who May be Heard

In any proceeding taken under Part II of The Child Welfare Act, 1978 the Court may hear any person with evidence that is relevant. Such persons may include:

- 1) the child, or anyone appearing on his behalf,
- 2) a parent of the child, or anyone appearing on the parent's behalf,
- 3) a foster parent who has cared for the child for the preceding 6 month period, or anyone appearing on the foster parent's behalf,
- 4) the Local Director of a Children's Aid Society or anyone appearing on his behalf,
- 5) any person authorized by the Board of Directors to appear on behalf of the Children's Aid Society,
- 6) a Clerk of a Municipality or his authorized representative,
- 7) a Regional Director of the Ministry of Community and Social Services,
- 8) any person authorized by the Minister of Community and Social Services on behalf of Ontario.

s28(3)

Foster Parents

Foster parents who are served with Notice of the proceedings may appear with or without legal counsel to give evidence relevant to the case. Unless the Court grants leave, foster parents are not permitted to take further part in the proceeding.

s28(9)

Oral Evidence

A Court customarily hears proof of the case by oral testimony of persons requested by a party to the proceedings to give evidence at the Hearing. Any party may request a Judge or a Justice of the Peace to summon any person to attend before the Court for the purpose of giving evidence. The summons may also require the person to produce records, writings or things in his possession or over which he has control.

s28(2)

In addition the Court may of its own volition require any person to attend the Hearing for the purpose of giving evidence. That person may also be required to produce anything in his possession or under his control that may be relevant to the case.

s28(2)

Affidavit Evidence

The Court may receive affidavit evidence on any matter under Part II of The Child Welfare Act, 1978 if the affidavit is confined to facts within the personal knowledge of the person who makes the affidavit.

s28(5)

'Past Conduct' Evidence

Before making any decision that has the effect of placing or returning a child to the care and custody of a person other than a Children's Aid Society, the Court may consider the past conduct of that person towards any child who is or has been in the person's care in the past.

That evidence may be adduced by statements and reports (whether written or oral) and/or by transcripts, exhibits or findings in prior civil or criminal proceedings. The Court may in its discretion demand additional evidence. No person may claim any privilege or protection afforded by The Evidence Act in relation to the past conduct of another person, or the witness himself, toward the child.

s28(4)

'Best Interest' Evidence

Evidence addressing the issue of what is in the 'best interests' of the child who is the subject of the application is to be considered in the following proceedings under Part II of the Act:

- to assist the Court in determining whether the child found in need of protection should be subject to the supervision of the Children's Aid Society, made a ward of the Children's Aid Society, or made a Crown ward, s30
- to assist the Court at the time of a status review of an existing supervision order to determine whether the circumstances justify a variation of that order or a further Order under the Protection and Care Part of the Act, s32
- to assist the Court in determining whether an Order should be made regarding access to the child, s35
- in any statement of a plan proposed by a Children's Aid Society or a parent of the child for the child's care, s36(c)
- to assist a Court hearing an application to review a Society wardship, s37
- to assist the Court hearing an application to review the Crown wardship status of a child. s38
- to assist the Appeal Court in determining whether an Order for the care and custody of the child pending completion of the appeal should be made or varied. s43(4)
- to assist a Director of Child Welfare in determining whether a Crown ward should be placed for adoption, and in particular whether his foster parents are to be denied the opportunity of making application for his adoption. s45(3)

- to assist the Official Guardian or the Children's Aid Society in determining whether civil proceedings to recover damages or other compensation should be commenced.

s51

'Best interests' evidence includes the following factors, in addition to all other relevant considerations placed before the Court:

- 1) the mental, emotional and physical needs of the child, and the care and/or treatment appropriate to meet those needs,
- 2) the child's opportunity to enjoy a parent-child relationship, and to be a wanted and needed member within a family structure,
- 3) the child's mental, emotional and physical stages of development,
- 4) the effect upon the child of any disruption in his sense of continuity,
- 5) the merits of any plan proposed by the agency that would be caring for the child compared with the merits of the child returning to or remaining with the parent,
- 6) the child's views and preferences, where such views and preferences can reasonably be ascertained,
- 7) the effect upon the child of any delay in the final disposition of the proceedings,
- 8) any risk to the child of returning him to or allowing him to remain in the care of the parent.

s1(b)

The Court is required to consider those factors enumerated above that are relevant in the circumstances of the particular case.

s28(6)

13. ADJOURNMENTS

Restrictions on Length

The Court may adjourn a Hearing from time to time. However, any adjournment is limited to 30 days unless the Court grants a longer period either at the request of all parties, or if additional time is necessary in order to complete an Assessment ordered by the Court (see ch.16).

s28(13)(14)

If a longer period of adjournment is requested, all parties must consent. The Court will consider whether the longer period is advisable in the circumstances of the case, and state its reasons for the record.

s28(14)

Custody of the Child During Adjournments

Unless the Children's Aid Society shows cause why the child should be placed (or remain) in the temporary care and custody of the Society pending final disposition of the Protection application or the Court makes some other Order for the child's custody, the child will remain or be placed with the person who had charge of him immediately before his apprehension.

s28(13)

For the purpose of determining the child's care and custody during adjournment periods the Court may receive and base its decision on any evidence it considers credible and trustworthy in the circumstances.

s28(16)

The Children's Aid Society is not expected to prove its entire case until the full Hearing. To show cause is to raise an issue which ought to be tried by the Court at the full Hearing into the child's alleged need of protection.

Even if the Children's Aid Society fails to show cause why the child should remain in its care pending the final outcome of the Protection proceedings, the Court has discretion to make any order for care and custody of the child that seems advisable in the circumstances. However, the child may not be placed in a Training School or an Observation and Detention Home that has not been designated as a place of safety under The Child Welfare Act, 1978 (see ch.6).

s28(13)

Variation/Termination of Temporary Care and Custody Orders

The Order for temporary care and custody of the child may be varied or terminated if the applicant shows cause why a change in the arrangement for the child's care and custody should be made.

s28(15)

Evidence on Adjournment

The Court may receive and base its decision at the time of adjournment upon any evidence that it considers credible and trustworthy in the circumstances (e.g., hearsay).

s28(16)

14. RIGHTS OF ACCESS TO THE CHILD

Persons Who May Apply

The Children's Aid Society having care and custody or supervision of the child may apply to the Court at any time after the filing of the Protection application for an Order regarding the right of access to the child.

s35(1)

If the Society's long range goal is to return the child to his family after the period of care, it is important to maintain his emotional identification with his family. Societies are therefore encouraged to speak to the matter of access for each child they bring before the Court, unless the circumstances are such that it is clearly inappropriate.

The following persons may also make application to the Court for an Order regarding access but no application may be made by the same person more often than every 6 months:

s35(3)

1. the parent of a child,
2. any other person with whom the child is placed or to whom the child is returned subject to supervision by the Children's Aid Society,
3. the child 12 or more years of age,

s35(1)

No order is to be made regarding the right of access to a child over the age of 16 years.

s35(2)

When Application May be Made

The application may be made at any time after the commencement of proceedings under Part II of The Child Welfare Act, 1978. An Order respecting the right of access is not dependent on a judicial finding of a need of protection, nor is it conditioned by an Order made for the child's care as a result of that finding.

s35(1)

Notices to be given by the Children's Aid Society

The Children's Aid Society making application must give Notice to the following persons -

1. any parent of the child, s35(1)(d)
2. the child 10 or more years of age unless the Court directs that the child not be served with Notice (see ch.9). s35(5)(a)
3. the child under 10 years of age if the Court decides that he is entitled to be present at the Hearing (see ch.10), s35(5)(b)
4. any person with whom the child is placed or to whom the child is returned subject to supervision of the Children's Aid Society s35(1)(d)
5. any foster parent who immediately prior to the application has been caring for the child on behalf of the Children's Aid Society for more than 6 months. s35(1)(d)

Notice to be given by other Applicants

Any other person entitled to make application for an Order regarding the right of access to the child gives Notice to the Children's Aid Society. The Children's Aid Society upon receipt of that Notice serves a photocopy of the application on the following persons:

s35(1)

1. any parent of the child,
2. the child 10 or more years of age, unless the Court directs that he not be served with Notice (see ch.9),
3. the child under 10 years of age if the Court decides that he is entitled to be present at the Hearing (see ch.10),

4. any person with whom the child has been placed or to whom the child is returned subject to supervision of the Children's Aid Society,
5. any foster parent who immediately prior to the application has been caring for the child on behalf of the Children's Aid Society for more than 6 months. s35(6)

Judicial Options

Once the application is made, the Court may make any Order respecting the right of access to a child that is in the child's best interests (see ch.12). s35(4)

Access Collateral to Another Order

The Court may also make an Order regarding access at the time of making another Order under Part II of The Child Welfare Act, 1978. An existing Order regarding access may be altered, varied or discharged consistent with the best interests of the child. s35(4)

Access and the Crown Ward on Adoption Placement

See ch.21.

15. THE HEARING

The Court's Two-Fold Test

When a child is brought before the Court as one apparently in need of protection, the Judge is faced with two separate and distinct duties:

- 1) to determine whether the child is in need of protection
- 2) to make an Order for the child's protection commensurate with the need that is shown.

s30

Whether a child is in need of protection will depend upon whether the evidence presented at the Hearing is sufficient to bring the child within those definitions of a need of protection enumerated in Part II of the Act (see ch.1). It is an issue much narrower than the paramount issue of what is in the child's best interests. The Children's Aid Society which has the burden of proving the case must therefore ensure that the Court has before it not only evidence of the general circumstances of the case, but specific facts and circumstances which address the reason the child is before the Court at all. (See also ch.12.)

16. ASSESSMENTS

Persons who may be the Subject of an Assessment Order

After the child has been found in need of protection the Court may order any of the following persons to attend for medical, emotional, developmental, psychological, educational or social assessment:

- 1) the child who is the subject of the proceedings,
- 2) a parent of the child,
- 3) any other person in whose charge the child has been or may be (except a foster parent caring for the child on behalf of the Children's Aid Society). s29(1)

If the person ordered to attend for assessment refuses to do so, the Court may draw any inference relating to the child's placement that the Court thinks is appropriate in the circumstances.

Selection of Assessor

The Court must be satisfied that the recommended assessor is qualified to perform the specific assessment(s) requested. s29(1)

Consent of the Assessor

The person or agency selected to perform the assessment must be specified in the Court Order. However, no assessment order may be issued to a specific diagnostician or any specific agency or centre unless that person or agency agrees to perform the assessment. s29(1)

Reporting to the Court

The results of the assessment are to be reported to the Court within 30 days of the Court order, unless the Court directs a longer period. s29(1)

Disclosure of the Assessment Report

The Court must provide a copy of the assessment report to the following persons:

- | | |
|--|-----------|
| 1) any person who is the subject of the assessment, | s29(2)(a) |
| 2) a parent appearing at the Hearing or the parent's Counsel or Agent, | s29(2)(c) |
| 3) the Children's Aid Society that is a party to the proceedings, | s29(2)(d) |
| 4) the child who is over 10 years of age, unless the Court is satisfied that the effect of all or any part of the report would be injurious to his emotional health, | s29(3)(a) |
| 5) the child under 10 years of age if the Court considers it reasonable in the circumstances, | s29(3)(b) |
| 6) counsel or agent for the child, | s29(2)(b) |
| 7) a Director of Child Welfare (if requested). | |

The Court may in its discretion provide any other person with a copy of the report if that person is involved in the case, (e.g., another agency).

s29(2)

Disclosure of the Assessment Report to the Child

The child over 10 years of age is entitled to a copy of the report unless the Court is satisfied that its disclosure to him would be injurious to his emotional health.

s29(3)

As a general rule the diagnostician will be expected to address in the report itself any potential injury to the child's emotional health which might be occasioned by disclosure of its contents to him.

What will constitute a potential risk to emotional health will depend on the emotional makeup of the individual child. However, the following factors should be considered by the party to the proceedings or the diagnostician who wishes the whole or any part of the assessment report withheld from the child:

- whether the child is probably already aware of the contents of the report,
- the possible harm to the child's sense of justice if the report is not disclosed to him,
- the possibility that secrecy will cause the child to exaggerate the seriousness of the information contained in the report,
- whether any potential harm can be avoided by having the assessor either interpret the report to the child, explain the essence of the report to him without giving him a copy, or rewrite the report omitting immaterial or damaging information.

Admissibility of the Report in Evidence

The assessment report forms part of the Court record in the case and is evidence in those proceedings. Since the report of an assessment cannot be ordered until the Court has found the child to be in need of protection, its primary purpose is to aid the Court in its determination of what Order for the child's protection is in his best interests.

s29(4)

The report of the assessment may also be received in evidence in any of the following proceedings:

- 1) in an appeal from a decision of the Provincial Court (Family Division) or the Unified Family Court under Part II of The Child Welfare Act, 1978,
- 2) in proceedings under The Coroner's Act, 1972,
- 3) in a civil action for the recovery of damages on behalf of the child under Part II of The Child Welfare Act, 1978.

s24(4)

The assessment report is not admissible in evidence for any purpose in any other proceedings without the consent of any person who is the subject of the assessment.

s29(4)

17. JUDICIAL OPTIONS - AFTER THE FINDING OF A NEED OF PROTECTION

Once the Court finds the child to be in need of protection, it may order the child placed under the supervision of the Children's Aid Society, or placed in the care and custody of either the Society or the Crown, as in the Court's opinion is in the child's best interests.

s30(1)

In determining which Order to make, the Court has a duty to ask the parents and the Children's Aid Society whether any efforts were made before the child came into the care of the Society to assist the child in his own home, whether by a Children's Aid Society, any other agency or an individual.

s30(5)

Supervision

This Order places the child with either his parent(s) or another person, subject to the supervision of the Children's Aid Society which has brought him before the Court. The minimum period of supervision is 6 months and the maximum 12 months, as the Court considers advisable in the circumstances of the case.

s30(1)(1)

With Terms and Conditions

The Court may impose reasonable terms and conditions which relate to the method of supervision upon any or all of the following persons:

- 1) the person with whom the child has been placed or returned,
- 2) the supervising Children's Aid Society,
- 3) the child,
- 4) any other person who has been given an opportunity to give evidence at the Hearing.

s30(4)

What is appropriate and reasonable will depend on the circumstances of the individual case and the nature of the evidence which has been offered in support of the supervision Order. The only statutory restriction is that the terms and conditions relate directly to the method of supervision of the child.

Society Wardship

This Order commits the child to the care and custody of the Children's Aid Society which has brought him before the Court. The period of Society wardship is dependent upon what the Court considers to be in the child's best interests, consistent with the evidence which has been offered in support of the Order. However, the Order cannot be made for a period longer than 12 months.

s30(1)2

Crown Wardship

This Order is the most permanent of those dispositions the Court may make after it has found the child to be in need of protection. Crown wardship transfers guardianship over the child to the Province of Ontario. The Children's Aid Society which has brought the child before the Court is given actual custody of the child, and is responsible for his care under the Crown wardship Order. The Society has a specific duty to try to find adoptive parents for the child, if adoption is in the child's best interests.

s30(1)(3)

s68

The child may remain a Crown ward until he attains the age of 18 years. Provision is made for earlier termination of the Order, (see p.61) and in certain circumstances care and maintenance may be extended to age 21 (see p.60).

s42

The Contents of the Court's Decision

Any decision made by the Court under Part II of the Act may be oral or written, but must include the following:

s36

- 1) a statement of the evidence upon which the decision is based,

s36(a)

- 2) in the case of an Order for supervision, a statement of any terms or conditions imposed, s36(b)
- 3) a statement of the plan for the child's care that the Children's Aid Society or parent proposes in the child's best interests, s36(c)
- 4) a statement of the reasons for the decision. s36(d)

If the Order authorizes the removal of the child from the charge of the person who had custody of him immediately before his apprehension, or refuses to return the child to that person, the statement must include reasons why the child cannot be adequately protected without that action. s36(d)

The Court is not required to identify any person caring for the child during the period of the proposed placement or any place where the proposed care is to be provided. s36(c)

Children Committed under the Juvenile Delinquents Act (Canada)

Where a child is committed to the charge of the Children's Aid Society under the provisions of the Juvenile Delinquents Act the child is deemed to be committed to the wardship of the Children's Aid Society having jurisdiction in the area where the child's case is heard. If the committal Order is for a fixed period of less than 12 months, the child is deemed a Society ward for the period specified in the Order. Where the Order is for an indefinite period or a period longer than 12 months, the child is deemed to be a Society ward for a maximum 12 month period. s30(2)

The Juvenile Court may commit a child to the care of the Children's Aid Society even if he has reached his 16th birthday.

Committal of a child under the Juvenile Delinquents Act should be a cooperative venture, recognizing the initial authority of the Court and the ongoing wardship responsibility of the Children's Aid Society. The Juvenile Court must give the Society reasonable notice of its intention to commit a child to its care under the provisions of the Juvenile Delinquents Act. A Children's Aid Society must accept a juvenile into its care if so ordered by the Court. The child becomes the responsibility of the Children's Aid Society both legally and financially, and the Society is required to provide care comparable to that provided a child committed to it under the provisions of The Child Welfare Act, 1978.

s30(3)

The Religious Faith Presumptions

Unless there is only one Children's Aid Society in the child's community, a Protestant child is to be committed to the care of a Protestant Society or institution and placed in a foster home with a Protestant family. A Roman Catholic child is to be committed to a Roman Catholic Society or institution and placed in a foster home with a Roman Catholic family. Where the child is neither Protestant nor Roman Catholic, the child is to be placed with a family of the child's own religious faith if such placement is practicable.

s44(4)(5)

A child's parents may enter into any agreement that they wish concerning his religious upbringing. However, where there is no written agreement, a child is deemed to have the same religious faith as his father. A child born outside of marriage is deemed to have the religious faith of his mother.

s44(5)(2)

Where the child is being raised in a religious faith other than that of his parents or where the child's religious faith cannot be readily determined, the Court may order that the child have such religious faith, if any, as the Court considers proper in the circumstances. For example, an Order may be made declaring the child to be of the Jewish faith.

The Court may have regard to the wishes of the child in determining any such Order.

s44(7)

Where a Children's Aid Society is unable to place the child in a suitable foster home within a reasonable time because of the operation of the religious faith presumptions, and would be able to place the child in a suitable foster home but for the operation of those presumptions, the Society or a Director of Child Welfare may apply to the Court for an Order that the religious faith presumptions do not apply to the child in respect of the placement.

s44(6)

18. PARENTAL CONTRIBUTION TO THE COST OF THE CHILD'S CARE

Corollary to Disposition

If the Court orders the child placed with a person other than his parent subject to supervision by a Children's Aid Society, or commits the child to the care of a Children's Aid Society, the Society may ask the Court to consider the ability of his parents (or his parent's estate) to contribute to the cost of the child's care.

s31(1)

The Order for maintenance specifying the amount of payment and the intervals at which the payments are to be made to the Society is in the Court's discretion.

Relevant Factors

In determining the amount to be contributed the Court must consider any of the circumstances listed below that it considers relevant:

- the assets and means of the child and of the parent (or the parent's estate),
- the capacity of the child to provide for his own support,
- the capacity of the parent (or the parent's estate) to provide support,
- the age of the child and of the parent,
- the physical and mental health of the child and of the parent,
- the mental, emotional and physical needs of the child,
- the legal obligation of the parent (or the parent's estate) to provide support for any other person,
- the child's aptitude for and reasonable prospects of obtaining an education,
- any other legal right the child has to support other than out of public monies.

s31(2)

An Order for maintenance expires with the child's 18th birthday.

s31(3)

Varying the Order

If the circumstances of the child or the parent change, application may be made to the Court to either vary the support order or to end it altogether.

s31(4)

19. DUTIES TO THE CHILD PLACED UNDER SUPERVISION

Preamble

There are no statutory duties specified for a child placed under supervision, unless the Court has attached specific terms and conditions in the Order relating to method of supervision (see ch.17). If conditions are attached, the Society should internally review the Order from time to time to ensure that the Court's intention is being carried out. Such internal review should also identify any need for variation of a term or condition or additional terms that might warrant an application for status review (see ch.24).

Where there is a proven history of abuse and the Court has returned the child home under supervision of a Children's Aid Society, either with or without terms and conditions, it is essential that the Society designate the file in such a way that the child is given regular and specific attention.

Agreement for Care During Supervision

A Children's Aid Society should not enter into an Agreement for Care with a parent if the child is already the subject of a Court order.

Transfers of Supervision

Options

If the person with whom the child has been placed under supervision moves within Ontario during the period of supervision, the Society named in the Order should carefully consider whether an application should be made to the Court in order to judicially transfer responsibility for the child's supervision to the Society having jurisdiction in the place of his new residence (see ch.24), or whether it should request the alternate Society to act as its agent in the carrying out of all or part of the supervision responsibility.

The application for status review may be made to the Court which made the original Order or to the Court having jurisdiction in the place of the child's new residence. Either Society may bring the application.

s32(6)

20. DUTIES TO A WARD OF THE CHILDREN'S AID SOCIETY

Legal Guardianship

A Children's Aid Society has all the rights and responsibilities of a parent over a child committed to its wardship, insofar as those rights and responsibilities relate to the child's care, custody and control.

s41

Placement

The child may be placed in a foster home or any other suitable setting consistent with his needs.

s45(1)

Unless placement of the child outside his community is thought to be in the child's best interests, a Children's Aid Society should try to place the child in the community that is familiar to him. The Society should be sensitive to the child's desire to maintain the continuity of his relationships with people who are important to him. Wherever possible, a serious attempt should be made to place the child in a resource of his own cultural and linguistic heritage.

The Society must ensure that the child receives an education in accordance with the laws of Ontario and in keeping with the child's intellectual capacity, and that provision is made for the child's occupational training and total development. The standard is that of a good parent providing for his own child.

s45(1)

A ward of the Children's Aid Society may be removed from his placement at any time if in the opinion of a Director of Child Welfare or the Local Director of the Children's Aid Society, the welfare of the child requires an alternate placement.

s45(2)

21. DUTIES TO THE CROWN WARD

Legal Guardianship

The Province of Ontario has all the rights and responsibilities of legal guardianship over each Crown ward, insofar as those rights and responsibilities relate to the child's care, custody and control. Other than those powers, duties and obligations specifically assigned to a Director of Child Welfare, the Crown's rights and responsibilities are exercised and discharged by the Children's Aid Society in whose charge the child is placed by the Court.

s40(1)

Placement

The Children's Aid Society may place the child in a foster home or other suitable setting for any period of time according to the needs of the child. The Society must ensure that the child receives an education in accordance with the laws of Ontario and in keeping with the child's intellectual capacity, and that provision is made for the child's occupational training and total development. The standard required is that of a good parent providing for his own child.

s45(1)

A Crown ward may be removed from a placement if in the opinion of the Local Director of the Children's Aid Society or a Director of Child welfare, the welfare of the child requires an alternate placement. Where the child's parent Society arranges for the Crown ward's care by another Children's Aid Society, or another Society agrees to supervise a Crown ward placed in a specialized setting within Ontario, the formal approval of a Director of Child Welfare is not required.

s45(2)

A Director of Child Welfare may unilaterally direct a Children's Aid Society to transfer a Crown ward in its custody to another Children's Aid Society or to an institution designated by him. Such transfer is rare, and limited to circumstances in which a Society has been unable or unwilling to assume care and custody of the Crown ward.

s40(2)

Considering Adoption

It is the duty of every Children's Aid Society to seek an adoptive home for Crown wards in its care and custody, if adoption is in the best interest of the individual Crown ward.

s68

Conditions Precedent to Adoption of a Crown Ward

If any person has a right of access to the Crown ward by Court order, the Society which has custody of the child must keep in mind that an application to the Court to terminate access is necessary before any adoption placement is considered.

At the Hearing of that application, the Court will consider whether the benefit to the child of the plan to seek an adoption placement for him outweighs the benefit to him of maintaining the access rights.

s38(5)(8)

The Crown ward also cannot be placed for adoption until any appeal from the Crown wardship order or any decision made at a review of the child's status has been finally disposed of or until the time for making an appeal has expired (see ch.20).

s38(8)

Expiry of Crown Wardship

A Crown wardship Order is deemed to expire when the child who is the subject of the Order marries or reaches the age of 18 years.

s42

Continued Care and Maintenance of a Former Crown Ward

Where the former Crown ward is unmarried and either enrolled as a full time student at an educational institution, or is mentally or physically incapacitated the Children's Aid Society which had charge of him may request a Director of Child Welfare to approve continued care and maintenance for him.

The additional care and maintenance may not extend beyond the 21st birthday of the former Crown ward, or such earlier period as a Director determines.

s42

22. STATUS REVIEWS

Application by the Children's Aid Society

If the child is under the age of 18 years, the Children's Aid Society which has charge of him must apply to the Court for a review of his status before the expiry of the period of supervision or wardship set out in the Court order. In addition, the Children's Aid Society may apply for review of the child's status at any time during the period of the Court order.

s19(1)(a)

ss32(1),
37(1), 38(1)

Special Case of a Child Removed From Supervision

If a child is removed from his parent or any other person with whom he is placed subject to Society supervision, the Children's Aid Society must apply to the Court for a review of the child's status. That application must be made as soon as is practicable and within five (5) days of the child's removal.

s32(2)

Application by Persons other than a Children's Aid Society

Once the Court order has been in effect for 6 months, or 6 months have expired since the child's last status review, the following persons may make application to the Court for review of the child's status:

- 1) a parent of the child,
- 2) the child 12 or more years of age,
- 3) anyone to whom the child is returned or with whom he is placed subject to supervision by the Society,

ss32(4),
37(2), 38(1)

ss32(4),
37(2), 38(1)

s32(4)

Where the Application may be brought

The child may be under supervision in a County or District other than that in which the last Court order with respect to him was made. In such a case, the status review application may be heard by the Provincial Court (Family Division) in the County or District where the child resides with the person who has care of him. Where the Court makes a further Order, the Children's Aid Society having jurisdiction in that area will be given supervision or committal of the child.

s32(6)

Application for review of a child's supervision status may also be made by the Society named in the Order to supervise the child's care, in which case the application may be transferred for hearing to the Court having jurisdiction in the County or District where the child is living (see ch.8).

s32(3)

Notice to be Given by the Children's Aid Society

The Children's Aid Society which makes application for status review must give Notice to the following persons:

- any parent of a child, ss32(1),
37(1), 38(2)
- any person having actual custody of the child, (in the case of a child under supervision), s32(1)
- a foster parent who immediately prior to the application has been caring for the child on the Society's behalf for a continuous period of more than 6 months (in the case of a Society or Crown ward), ss37(1), 38(2)

- the child 10 or more years of age, unless the Court directs that the child not be served because the effect of all or any part of the Hearing would be injurious to the child's emotional health (see ch.10). ss32(7), 37(4), 38(4)
- the child under 10 years of age, if the Court decides that he is entitled to be present at the Hearing, (see ch.10), ss32(7), 37(4), 38(4)
- a Director of Child Welfare, if the child is a Crown ward. s38(2)

If the child to be reviewed is a Crown ward over the age of 16 years, his parents do not have to be notified of the status review application. However, Notice should be given to them if at all possible unless it is clearly inappropriate in the circumstances. s38(4)

**Notice to be given by Person other than
a Children's Aid Society**

Any other person entitled to make application for review of the child's status gives Notice to the Children's Aid Society having care of the child. The Society then gives Notice of the application to be given to any person entitled who has not made the application.

1. any parent of the child, ss32(4), 37(5), 38(2)
2. any person other than the parent with whom the child is placed or to whom the child is returned subject to supervision by a Children's Aid Society, s32(4)

3. the child who is 10 or more years of age, unless the Court directs that the child not be served with Notice because the effect of all or any part of the Hearing would be injurious to the emotional health of the child (see ch.10) ss32(5), 37(5),
38(6)
4. the child under 10 years of age, if the Court decides that the child is entitled to be present at the Hearing (see ch.10), ss32(5), 37(5),
38(6)
5. any foster parent who immediately prior to the application has been caring for the child on the Society's behalf for a continuous period of more than 6 months (in the case of a Society or Crown ward), ss37(5), 38(6)
6. a Director of Child Welfare (if the child to be reviewed is a Crown ward). s38(2)

Child's Custody Pending Status Review

Where application is made for review of a child's wardship status, the child remains in the care and custody of the Children's Aid Society which has responsibility for him at the time the application is made. In other words, the status quo is to be maintained pending the final outcome of the status review. An applicant who desires a change in the status quo must show cause to the Court why the care and custody arrangements should be altered. ss37(6), 38(9)

The Hearing of a status review application may be adjourned from time to time, but an adjournment is restricted to a maximum of 30 days unless the Court grants a longer period (see ch.13). s28(17)

Persons Entitled to be Present at Status Review

See Chapter 10.

Evidence

See Chapter 12.

Orders Available at Status Review

The Court may be asked to consider any of the following dispositions at the time of the full Hearing of the status review application:

1. the variation or termination of any term or condition relating to the method of supervision of the child, s32(4)
2. an Order for supervision, Society wardship (unless the child is a Crown ward), Crown wardship, either with or without an Order relating to access.
3. the termination of any existing supervision, Society wardship or Crown wardship Order, ss32(4), 37(1)(2), 38(2)(2)
4. an Order relating to access. ss32(4), 37(2), 38(1)(2)

Restrictions on the Court's Power

The Court's task is to determine whether the particular circumstances of the child's case justify any of the permitted dispositions, subject to the following statutory restrictions on the Court's power:

- 1) No Order may be made that results in the child being in the care and custody of a Children's Aid Society for a continuous period of more than 24 months (see ch.3). ss37(1)(2), 38(1)(2)

If, however, the 24 month period is passed before the Court has had an opportunity to hear the status review application, the Order being reviewed is extended until final disposition is made of the application.

s37(1)(2)

2) If the child is a Crown ward, no Order for Society wardship is available.

3) Before making an Order terminating an Order for access to a Crown ward, the Court must consider whether the benefit to the child of any plan proposed for him (including plans for seeking an adoption placement) outweighs the benefit to the child of maintaining the access rights.

s38(5)

4) If the Crown ward has been placed with prospective adopters the Court has no jurisdiction to review the Crown wardship Order at all

s38(7)

23. ADMINISTRATIVE REVIEW OF CROWN WARDSHIP

Generally

A Crown ward who has been a ward of Ontario for a continuous 24 month period will have his status reviewed administratively under The Child Welfare Act, 1978. The review authority is conferred by the Act on a Director of Child Welfare, with express provision for its delegation. For the period of phase-in, that delegation will be entrusted to ministerial appointees. The Ministry's long-term goal is to initiate peer review of a Society's work with its Crown wards through delegation of the review authority to people at the local level.

Administrative review of the Crown ward will take place every 2 years, with the Reviewer reporting his findings and recommendations to a Director of Child Welfare. If the report indicates the advisability of formal judicial review of the ward's status, the Director of Child Welfare may direct the Children's Aid Society which has care of the child to make application to the Court⁷⁷ for judicial review of the child's status. The status of the Crown ward is altered only by Court order.

24. APPEALS

Jurisdiction of the Court

An appeal from the decision of the Provincial Court (Family Division) is taken to the County or District Court having territorial jurisdiction where the Provincial Court (Family Division) made its decision. Appeal from a decision of the Unified Family Court is taken to a single Judge of the Supreme Court of Ontario.

s43(1)

Persons who may appeal

The following persons may appeal any decision of the Provincial Court (Family Division) or the Unified Family Court:

- | | |
|--|-----------|
| 1) a parent of the child, | s43(1)(a) |
| 2) any other person in whose charge the child may have been at the time of apprehension, | s43(1)(a) |
| 3) a Director of Child Welfare or the Local Director of a Children's Aid Society, | s43(1)(b) |
| 4) a next friend on behalf of the child. | s43(1)(c) |

Time for Appeal

An appeal must be launched within 30 days of the lower Court Order, unless the Court extends that time. No extension may be granted if the child is a Crown ward and has been placed for adoption.

Custody of the Child pending Disposition of the Appeal

Once the Notice of Appeal is served on the lower Court its decision is stayed for the next 10 days. If the decision being appealed authorizes the child to remain in the care and custody of the Children's Aid Society, the child remains in that custody pending final outcome of the appeal.

s43(2)(3)

If the child is in the custody of the Children's Aid Society at the time of the decision being appealed but without the express authority of a Court Order, he may remain in the care and custody of the Society unless the County or District Court (or a single Judge of the Supreme Court of Ontario, where applicable) makes another Order for the child's temporary care and custody pending final disposition of the appeal proceedings.

s43(2)

In other words, if the Provincial Court Family Division (or the Unified Family Court, where applicable) has dismissed the Protection application or has ordered the child returned to his parents, the child remains in the care and custody of his parents pending final disposition of a Society's appeal from that lower Court decision, unless the Children's Aid Society makes application to the County or District Court (or to a single Judge of the Supreme Court of Ontario), within 10 days for an alternate Order for the child's temporary care and custody.

The applicant must persuade the Court that an Order for temporary care and custody of the child pending final disposition of the appeal is in the child's best interests (see ch.12). The Court may make any Order that it considers advisable for the child's temporary care and custody except an Order placing the child in a training school. An Observation and Detention Home designated as a place of safety may be available if no other less secure facility can hold the child.

s43(4)

The Court may vary its temporary care and custody Order at any time if any party to the appeal proceedings persuades the Court that it is in the best interests of the child.

The time that the child is in the temporary care and custody of a Children's Aid Society pending final disposition of an appeal is included in the calculation of the 24 month maximum permitted care of the child by a Children's Aid Society.

s43(5)

However, where that 24 month maximum is passed while the appeal is still pending, the Order being appealed is extended until final disposition is made of the appeal.

s43(6)

Evidence on Appeal

If the Court gives leave, further evidence relating to matters both preceding and subsequent to the lower Court decision may be received, either by affidavit, oral examination or as directed by the Court.

s43(8)

25. OFFENCES UNDER PART II OF THE ACT

Leaving the Child Unattended

It is an offence to leave a child unattended without making reasonable provision in the circumstances for his supervision, care or safety. The offence is punishable by fine of up to \$1000 or imprisonment for a maximum period of 1 year, or both. Any subsequent offence is punishable by maximum fine of \$2000 or imprisonment for a maximum 2 year period, or both.

s94(3)

Onus of Proof

If the child who is left unattended is under ten years of age, the person charged must satisfy the Court that reasonable provision in the circumstances was made to ensure the child's supervision, care or safety.

s48(3)

Interference with the Child

It is an offence punishable on conviction by a fine of up to \$1,000 or to imprisonment for a term of up to 1 year, or both, to:

s94(1)(f)

- induce or attempt to induce a child to leave the care of any person with whom he is lawfully placed,
- detain or harbour the child who is in lawful care, after a demand is made by a person authorized to require the child to be delivered up,
- visit, write to, telephone, communicate with, remove or attempt to remove or otherwise interfere with a child in the lawful care and custody of a Children's Aid Society or his foster parents, without the authority of a Court order respecting access or the consent of the Society having care, custody or supervision of the child.

s46

The Children's Aid Society which has the care, custody or supervision of the child may apply to the Supreme Court of Ontario for an Order restraining any interference. Procedure on this application is governed by the Ontario Rules of Practice. The Order is discretionary.

s95

The Court may take the following action if contempt is proved:

- 1) levy a fine on the person who has disobeyed the Order, and/or
- 2) commit the person to jail until he has purged his contempt.

The Child Performing in Public

It is an offence, punishable on conviction by a fine of up to \$1,000 or to imprisonment for a term of up to 1 year, or both to permit a child under 16 years of age to perform in public between the hours of 9.00 p.m. and 6.00 a.m. without the authority of a licence granted by the Municipality where the entertainment is to take place. The Children's Aid Society having jurisdiction in the community must be satisfied that provision has been made to ensure the proper treatment of the child. The grant of the licence and any terms and conditions imposed by the Municipality is subject to the approval of the Society.

s94(1)(f)(v)

s53

The Child Loitering/Working in a Public Place at Night

A parent who permits his child under 16 years of age to work in any public place between the hours of 9.00 p.m. and 6.00 a.m. or to loiter between the hours of 10.00 p.m. and 6.00 a.m. in any place to which the public has access, commits an offence, and is liable on conviction to a fine of up to \$1,000 or to imprisonment for a term of up to 1 year, or both.

s54
s94(1)(e)

A child who is found contravening this provision of the Act, and who does not heed a warning given by a police officer, may be taken home or to a place of safety. If the child is taken to a place of safety he must be brought before the Court to determine whether he is in need of protection under Part II of the Act.

s54

Abuse of a Child

A person who inflicts abuse upon a child or permits a child to suffer abuse commits an offence and is liable on conviction to a fine of up to \$2,000 or to imprisonment for a term of up to 2 years, or both.

s94(2)(a)

Equivalent liability attaches to a person who abandons or deserts the child.

